U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-A-S-, LLC

DATE: APR. 16, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a semiconductor manufacturer, seeks to employ the Beneficiary as a metrology engineer. It requests his classification under the second-preference, immigrant category as a member of the professions holding an advanced degree. Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This employment-based, "EB-2" category allows a U.S. business to sponsor a foreign national for lawful permanent resident status in a job requiring at least a master's degree, or a bachelor's degree followed by five years of experience.

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate the Beneficiary's possession of the minimum employment experience and skills required for the offered position.

On appeal the Petitioner submits additional evidence. It asserts that, despite lacking a letter from a former employer of the Beneficiary describing his experience and skills gained, the record demonstrates his qualifications for the position.

Upon *de novo* review, we will dismiss the appeal.

I. EMPLOYMENT-BASED IMMIGRATION

Immigration as an advanced degree professional generally follows a three-step process. First, to permanently fill a position in the United States with a foreign worker, a prospective employer must obtain certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). DOL approval signifies that the United States lacks sufficient able, willing, qualified, and available workers for the offered position and that employment of a foreign national in the job will not harm the wages or working conditions of U.S. workers similarly employed. *Id.*

If DOL certifies a position, an employer must next submit the labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). Section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS determines whether a foreign national meets the requirements of the DOL-certified position and the requested immigrant classification. If USCIS grants a petition, a

foreign national may finally apply for an immigrant visa abroad or, if eligible, for adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

II. THE REQUIRED EXPERIENCE AND SKILLS

A petitioner must establish a beneficiary's possession of all DOL-certified job requirements of an offered position by a petition's priority date. *Matter of Wing's Tea House,* 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977).[1] In evaluating a beneficiary's qualifications, USCIS must examine the job-offer portion of an accompanying labor certification to determine the minimum requirements of a position. USCIS may neither ignore a certification term, nor impose additional requirements. *See, e.g., Madany* v. *Smith,* 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that "DOL bears the authority for setting the *content* of the labor certification") (emphasis in original).

Here, the labor certification states the primary requirements of the offered position of metrology engineer as a master's degree, and two years of experience in the job offered or as an engineer, technical staff member, research scientist, graduate researcher, graduate research assistant, research assistant, or intern. The labor certification also states the Petitioner's acceptance of an alternate combination of education and experience: a bachelor's degree followed by five years of experience. In addition, part H.14 of the labor certification, "Specific skills or other requirements," states that the offered position "[r]equires 2 years of experience with: SPC KPIs; recipe creation and lots disposition; defect count analysis; tool data integrity analysis; and new product introduction in semiconductor manufacturing industry."[2]

The record establishes the Beneficiary's possession of a master's degree. At issue is his possession of at least two years of experience with the skills specified on the labor certification.

On the labor certification, the Beneficiary attested that, by both the petition's priority date and his start date of nonimmigrant employment with the Petitioner in the offered position, he had about 13 years of full-time, related experience.[3] The Beneficiary stated that he worked for a semiconductor company in Singapore for more than six years, from March 2010 to August 2016. There, he said he worked as a metrology engineer for more than four years, from March 2010 through August 2014, and as a process integration engineer for about 22 months, from October 2014 to August 2016. The Beneficiary also indicated work as an engineer with other foreign companies from March 2002 to October 2009.

A petitioner must generally support a beneficiary's claimed, qualifying experience with letters from former employers. 8 C.F.R. § 204.5(g)(1). The letters must include the names, addresses, and titles of the employers, and specific descriptions of a beneficiary's job duties. *Id.* If such letters are

[1] This petition's priority date is October 12, 2017, the date DOL accepted the accompanying labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

[2] The Petitioner states that "SPC" stands for Statistical Process Control. "KPIs" appears to refer to Key Performance Indicators or Key Process Indicators.

[3] A labor certification employer generally cannot rely on experience that a foreign national gained with it. *See* 20 C.F.R. § 656.17(i)(3) (allowing two exceptions: if the foreign national gained the experience in a position substantially different from the offered one; or if the employer can demonstrate the impracticality of training a worker for the offered job). The Petitioner here does not assert its reliance on the experience or skills the Beneficiary gained with it.

unavailable, however, "other documentation relating to the alien's experience . . . will be considered." *Id.*

Here, the petition included copies of an "appointment" letter and a certificate of service from the Beneficiary's claimed former employer in Singapore. The letter indicates the Beneficiary's hiring as a metrology engineer in March 2010. The certificate states that he worked for the company through August 2016, most recently as an engineer in its process integration department. Contrary to 8 C.F.R. § 204.5(g)(1), however, neither document describes the Beneficiary's job duties. The documents also do not indicate whether he gained experience with the skills specified on the labor certification. The documents therefore do not establish the Beneficiary's qualifications for the offered position.

In response to the Director's request for additional evidence (RFE), the Petitioner submitted a letter from a human resources official at the Singaporean company. The letter states that the Beneficiary worked in the company's metrology department from March 2010 through August 2014 and in its process integration department from September 2014 through August 2016. The letter also identifies the Beneficiary's position as of his departure from the company as a senior engineer. Like the other company documents, however, the letter does not describe the Beneficiary's job duties or indicate his acquisition of the required skills. The letter states: "Due to confidentiality of information, we are unable to provide any further details."

On appeal, the Petitioner argues that, in lieu of a company letter describing the Beneficiary's job duties and skills obtained, USCIS should accept the Beneficiary's certificate of service. The Petitioner asserts that:

> it has been consistently established Service policy to accept service certificates as evidence of work experience. This is in keeping with the guidance at 8 C.F.R. § 204.5(g)(1), as a service certificate is an "other" form of documentation that provides the critical details of an individual's present and/or past work experience.

We are unaware, however, of the asserted USCIS policy, nor does the Petitioner provide evidence of it. As noted above, the regulations at 8 C.F.R. § 204.5(g)(1) allow the submission of other documentation if the required letters are unavailable, but it remains the Petitioner's burden to demonstrate the Beneficiary's eligibility. Here, the offered position requires at least two years of experience with specified skills. The certificate of service submitted by the Petitioner does not describe the job duties the Beneficiary performed or the skills he gained on the job. Thus, contrary to the Petitioner's assertion, the certificate does not provide "the critical details" of the Beneficiary's experience. The certificate of service therefore does not establish his qualifications for the offered position.

The Petitioner also submitted a copy of a letter on personal stationery. Identifying its signatory as a manager at another company, the letter states that the Singaporean company employed the Beneficiary full-time as a metrology engineer from March 2010 through August 2014. The letter also describes the Beneficiary's job duties and experience with the required skills during that period. The letter states that its signatory has "personal knowledge of [the Beneficiary's] employment history and can attest to the job duties and responsibilities while employed with [the Singaporean] company." The letter,

however, does not explain the basis of the signatory's claimed knowledge of the Beneficiary's employment. The letter is therefore unreliable evidence of the Beneficiary's qualifications for the offered position.

The Petitioner's RFE response also included a "profile" of the letter's signatory. The profile, similar to a resume or *curriculum vitae*, states the signatory's employment as a "Principal Engineer" at the Singaporean company from 2009 to 2015, roughly the same period the Beneficiary claims to have worked there. The profile, however, is unsigned, and the record lacks sufficient evidence corroborating its information. The profile therefore does not establish the signatory's employment by the Singaporean company or explain how he gained personal knowledge of the Beneficiary's duties and skills during the claimed period.

On appeal, the Petitioner argues that the RFE faulted the signatory's letter only because it was not printed on the stationery of the Singaporean company. The Petitioner contends that, because it demonstrated the unavailability of a company letter describing the Beneficiary's job duties and skills, the signatory's otherwise valid letter demonstrates the Beneficiary's qualifications for the offered position. The Director, however, also found the letter to be unreliable. His decision notes that "the letter does not specifically state how [the signatory] has knowledge of the beneficiary's experience." Thus, the Petitioner received notice of the letter's unreliability and an opportunity on appeal to submit rebuttal evidence. The omission of the letter's unreliability in the RFE therefore did not prejudice the Petitioner. Also, counsel on appeal describes the letter's signatory as the "direct manager" of the Beneficiary during his employment as a metrology engineer at the Singaporean company. Counsel's asserted description, however, does not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). The Petitioner must substantiate counsel's statements with independent evidence, which may include affidavits or declarations.

The Petitioner also submitted a letter from the Beneficiary's current manager in the United States. The Petitioner notes the letter's statement that the Beneficiary "applies principles and theoretical knowledge of" the skills required for the offered position. The Petitioner argues that the Beneficiary "clearly attained [knowledge of the specified skills] from his extensive years of employment with" the Singaporean company. But the manager's letter does not state where or when the Beneficiary gained knowledge of the required skills, or whether the manager has personal knowledge of how the Beneficiary's acquired them. The letter therefore does not demonstrate the Beneficiary's qualifications for the offered position by the petition's priority date.

In addition, the Petitioner submitted a job description printed in October 2018 from the website of the Singaporean company. The Petitioner asserts that the printout, which mentions some of the skills required for the offered position, describes the Beneficiary's job duties in his last position at the company. The record, however, lacks sufficient evidence that the 2018 job description relates to the position the Beneficiary held from 2014 to 2016. On appeal, the Petitioner notes that the job description refers to the same fabrication facility referenced in the Beneficiary's appointment letter from the company. But, since the Beneficiary worked for the company more than two years ago, it may have changed the job duties of his last position. Moreover, even if the printout describes the Beneficiary's job duties as a process integration engineer in Singapore, the record does not

demonstrate that he held that job for at least two years as required for the offered position. The job description also does not indicate that the position's duties involved the required skills of "defect count analysis" or "new product introduction." The job description therefore would not establish the Beneficiary's qualifications for the offered position.

On appeal, the Petitioner submits copies of a metrology handbook and other information about the semiconductor industry. The Petitioner argues that the skills needed for the offered position "are typical requirements pursuant to standard business necessity for metrology and process integration engineers in the semiconductor industry." We do not question, however, the validity of the offered position's job requirements. Rather, we question whether, by the petition's priority date, the Beneficiary met them. As discussed above, the record lacks sufficient, independent, objective evidence of his possession of the minimum experience and skills required for the offered position.

III. CONCLUSION

The record on appeal does not establish the Beneficiary's qualifying experience and skills for the offered position. For this reason, we will affirm the petition's denial. A petitioner bears the burden of demonstrating eligibility for a requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of S-A-S-, LLC*, ID# 3935872 (AAO Apr. 16, 2019)